



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**[www.bpu.state.nj.us](http://www.bpu.state.nj.us)**

**CABLE TELEVISION**

IN THE MATTER OF THE PETITION OF	)	<u>ORDER ADOPTING IN PART AND</u>
CABLEVISION OF OAKLAND, INC. FOR RENEWAL	)	<u>MODIFYING IN PART AN</u>
OF A CERTIFICATE OF APPROVAL TO CONTINUE	)	<u>INITIAL DECISION AND</u>
TO OPERATE AND MAINTAIN A CABLE	)	<u>RENEWAL</u>
TELEVISION SYSTEM IN THE BOROUGH OF	)	<u>CERTIFICATE OF APPROVAL</u>
LINCOLN PARK, COUNTY OF MORRIS, STATE	)	
OF NEW JERSEY	)	BPU DOCKET NO. CE01030164
		OAL DOCKET NO. CTV 3150-02N

**SERVICE LIST ATTACHED**

BY THE BOARD<sup>1</sup>:

On December 11, 1975, the Board granted Micro-Cable Communications Corp. d/b/a UA-Columbia Cablevision of New Jersey ("UA-Columbia") a Certificate of Approval, in Docket No. 7510C-6132, for the construction, operation and maintenance of a cable television system for the Borough of Lincoln Park ("Borough"). Subsequently, UA-Columbia underwent internal restructuring and was doing business as United Artists Cable of New Jersey ("United Artists"). On October 7, 1991, the Board granted United Artists a Renewal Certificate of Approval for the Borough in Docket No. CE91030301. In Docket No. CO92080822, approved by the Board on November 16, 1992, United Artists informed the Board that it would do business as TCI of Northern New Jersey ("TCINNJ"). TCINNJ underwent further restructuring and informed the Board that it would no longer use the name Micro-Cable Communications Corp. and would use the corporate name of TCI of Northern New Jersey, Inc. ("TCINNJ, Inc.").

On December 17, 1997, the Board approved the transfer of the Certificate of Approval for the Borough from TCINNJ, Inc. to Cablevision of Oakland, Inc. ("Petitioner"), in Docket No. CF97090674. On January 25, 2002, the Petitioner informed the Board that, as part of an internal reorganization approved by the Board on January 3, 2002, in Docket No. CO00030182, it would be known as Cablevision of Oakland, LLC. Although the Petitioner's above referenced

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<sup>1</sup> Commissioner Frederick F. Butler did not participate in the deliberation or vote in this matter.

Certificate expired on December 11, 2000, it is authorized to continue to provide cable service to the Borough pursuant to N.J.S.A. 48:5A-25, pending disposition of proceedings regarding the renewal of its Certificate of Approval.

The Petitioner filed an application for the renewal of its municipal consent with the Borough on March 3, 2000, pursuant to N.J.S.A. 48:5A-23 and N.J.A.C. 14:18-13. The Borough, after public hearing, adopted a municipal ordinance granting renewal consent on October 16, 2000. On November 30, 2000, the Petitioner formally rejected the ordinance.

On March 15, 2001, pursuant to N.J.S.A. 48:5A-17(d), the Petitioner filed with the Board for a renewal of its Certificate of Approval for the Borough. The Petitioner alleged that the Township's actions were arbitrary and capricious. In its petition, the Petitioner stated that several provisions in the Borough's ordinance were not in accordance with existing law. The Borough filed an answer to the petition on March 26, 2001. A pretransmittal settlement conference was held on June 14, 2001, in accordance with N.J.A.C. 14:17-8.1 et seq. but no settlement was reached.

On March 1, 2002, the Board transmitted the case to the Office of Administrative Law ("OAL") for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The Board received a notice of filing from the OAL dated March 26, 2002. The case was assigned to Administrative Law Judge ("ALJ") Mumtaz Bari-Brown. After several prehearing conferences, three plenary hearings were held on March 11, 12 and 13, 2003. Subsequently, both parties submitted post-hearing briefs. A follow-up status conference was scheduled for May 29, 2003, but the Borough filed correspondence with ALJ Bari-Brown indicating that it believed the matter was fully tried and that the court should make a determination based on the evidence on record. The record closed on March 12, 2004.

On June 11, 2004, ALJ Bari-Brown issued an Initial Decision. On June 24, 2004, the Board issued an Order of Extension, NUNC PRO TUNC, providing ALJ Bari-Brown an extension of 45 days, until June 11, 2004, to issue an Initial Decision on the matter. In her Initial Decision, ALJ Bari-Brown declined to issue direct certification to the Petitioner for the Borough but instead rendered decisions on each of the specific terms of the ordinance that were in contention by the parties. On June 28, 2004, the Petitioner filed exceptions to the Initial Decision with the Board. The Borough did not file exceptions.

### INITIAL DECISION

ALJ Bari-Brown, in the Initial Decision issued on June 11, 2004, made a number recommendations and findings. In the following discussion, the Board reviews the most significant recommendations.

#### Duration of the franchise:

In the Borough's ordinance, Section 5, the duration of the franchise was set at five years with an automatic five year extension. In reviewing this provision, ALJ Bari-Brown concluded that the Petitioner failed to demonstrate the actions of the Borough in granting a 5-year franchise term were arbitrary, unreasonable or capricious, and declined to modify the term to ten years as requested by the Petitioner. Therefore, the ALJ recommended that the five year term should control. In its exceptions to the Initial Decision, Petitioner stated that, while it had requested a ten year term, it would accept the term as presented in the ordinance and the Initial Decision.

In light of the acknowledgement by the Petitioner that the five year term with a five year automatic renewal is acceptable, the Board HEREBY FINDS that the term of the franchise, as presented in the Initial Decision, is appropriate, and therefore the Board HEREBY ADOPTS the ALJ's finding as to this element.

Extension of service:

In the Borough's ordinance, Section 8, the Company was required to offer service to all businesses or residences located "along any right of way" and to those businesses or residences located along the private right of ways in a number of listed developments. In her Initial Decision, ALJ Bari-Brown determined that the Office of Cable Television ("OCTV" or "Office"), via a letter, indicated that it was a long-standing policy for the cable operators in the municipalities in the Petitioner's system to provide service to all residents regardless of where they resided. Therefore, the ALJ determined that Section 8 of the ordinance was acceptable as written and suitable for enforcement.

In its exceptions, the Petitioner objected to Section 8 to the extent it requires the Petitioner to enter private rights-of-way without proper authorization. In addition, Petitioner claimed, Section 8 requires the Petitioner to extend service to businesses at standard and non-standard installation rates, contrary to the Application for Municipal Consent which provided a commercial extension policy. As such, the Petitioner recommended that the Board strike in its entirety Section 8(b) which would require it to provide service to the private rights-of-way as well as the reference in Section 8(a) to the extent it can be read to require access to private rights-of-way without due authority.

Following review, the Board believes a modification of the ALJ's finding is required. The Board notes the commercial line extension policy included with the Application of Municipal Consent that mirrored the policy in existence in the Borough since at least the previously issued Certificate of Approval. In light of this "standard" policy, the Board declines to require residents to absorb the cost of installation of service to businesses within the Borough. Similarly, the Board recognizes that the Borough does not have the authority to grant the Petitioner access to the private rights-of-way as specified in the ordinance. This prohibition, however, should not preclude these residents in the regions listed from receiving service from the Petitioner as the Petitioner maintains a residential "full build" in the Borough. The Board believes that, should there be a request for service from a resident in Deer Run, Woodland Hills, Pine Brook Village, Hilltop Farms, Skyline Village, Hunting Meadows or Beaver Brook Garden Apartments, the Petitioner should be required to ask the property owner for access to the premises. If access is denied, the Petitioner can file a petition with the Board for access pursuant to N.J.A.C. 14:18-4.5 and N.J.S.A. 48:5A-49. Nevertheless, the Board notes that the Petitioner's standard and non-standard installation policies would apply. Therefore, the Board HEREBY FINDS that the Petitioner provide residential service to any party who requests it, should seek permission or access to any private rights-of-way as necessary and authorized by law in the event of service requests, and should be bound by the commercial line extension policy included in the Application of Municipal Consent and set forth in this Order at Appendix "I". Accordingly, the Board HEREBY MODIFIES the Initial Decision of ALJ Bari-Brown to the extent necessary to ensure that residential customers are built as requested, commercial customers are built as set forth in the commercial line extension policy and private rights-of-way are respected as required by law.

Advanced notice of construction:

In the Borough's ordinance, Section 9, the Company is required, "except in the case of emergent repair or as otherwise provided by law" to provide notice in writing at least ten days prior to any "proposed excavation, repair or installation within the public right-of-way, including state or county roads" and forty-eight hours advanced telephone notice of "any proposed entry within the public right-of-way, which may interfere with, infringe upon, or affect vehicular or pedestrian traffic upon any street or public right-of-way, including tree trimming or tree removal." ALJ Bari-Brown, in issuing her Initial Decision, did not specifically make a recommendation on this issue such that the Board takes the ALJ's recommendation to be that the provision should remain as included in the ordinance.

In its exceptions, the Petitioner objected to Section 9 of the ordinance as unfairly singling out cable television companies with respect to notice obligation as well as objecting that the provision is lacking in clarity. The Petitioner asserted that this provision contains notice requirements that do not apply to other, non-cable television utilities operating within the Borough. In addition, the Petitioner stated that the language "which may interfere with, infringe upon, or affect vehicular or pedestrian traffic" is overly broad. The Petitioner recommended that the Board modify the language within this order to provide that the notice requirements applicable to non-cable utilities operating in the Borough should apply to the Petitioner as well.

The Board has reviewed this provision and believes that it is reasonable, specific and not overly broad. While a uniform notice requirement for all utility and cable operators in the Borough may have a certain appeal, the Borough's notice requirement as to the Petitioner is not arbitrary and capricious in light of the timetable for notice and the emergency exception. Similarly, the language "which may interfere with, infringe upon, or affect vehicular or pedestrian traffic" provides a description sufficient to serve as a foundation for the heightened notice requirement sufficient to allow the Petitioner to comply while excluding construction or excavation that does not impact upon traffic conditions within the Borough. Thus, the Board HEREBY FINDS that the Borough's notice requirement is not arbitrary or capricious and is not overly broad or ambiguous. Therefore, the Board HEREBY ADOPTS the Initial Decision of the ALJ as it applies to this issue.

Municipal rate approval:

In the Borough's ordinance, Section 16, the Borough notes its approval of the Petitioner's rates and the determination that the rates are reasonable, subject to the review of the Board. ALJ Bari-Brown did not specifically make a recommendation on this issue but did not take exception to its inclusion in the ordinance such that the Board takes the ALJ's recommendation to be an acceptance of the provision.

In its exceptions, the Petitioner claimed that Section 16 was in violation of federal and State law as a municipality does not have the authority to approve the rates charged by a cable operator. As such, the Petitioner called for this section to be eliminated.

The Board agrees with the exception filed by the Petitioner. Federal and State law clearly indicate that the Borough has no authority to regulate the rates of the Petitioner. While nothing precludes the Borough from expressing its approval or disapproval of the rates of the Petitioner via a resolution on a specific rate increase proposal by a cable company, a municipal consent ordinance is not the proper forum for such expression. N.J.S.A. 48:5A-28(g) provides that a

municipality must approve the initial rates when the franchise is first granted, subject to Board rules and regulations. In addition to this matter involving a renewal and not an initial franchise, the provision has been pre-empted by federal law governing the regulation of cable television rates which provides that only the Board, as the franchising authority in the State of New Jersey, may regulate in any manner the rates of a cable television company. Therefore, the Board HEREBY FINDS that Section 16 of the Borough's ordinance, and its discussion of the Borough's approval of cable television rates, runs afoul of both federal and State law such that inclusion in the ordinance is inappropriate. Accordingly, the Board HEREBY MODIFIES the Initial Decision of ALJ Bari-Brown such as to strike Section 16 from the Borough's ordinance.

Senior discounts:

In the Borough's ordinance, Section 26, the Petitioner was required to provide a discount to senior citizens and disabled residents of the Borough set at a rate based upon the "lowest or most advantageous of such rates" in any other New Jersey area serviced by the Petitioner. ALJ Bari-Brown, in her Initial Decision, noted that the Petitioner offered a senior citizen discount to the Borough and therefore recommended that Section 26 be considered acceptable as written.

In its exceptions, the Petitioner stated that insofar as the ordinance requires the Petitioner to provide a discount at "lowest or most advantageous rates," it would be considered a "most favored nations" clause, which would require the ordinance to be amended if and when the Petitioner provided the more favorable terms. The Petitioner asserted that similar language was struck in the Order Granting Partial Summary Decision I/M/O the Application of Cablevision of Oakland, Inc., Successor in Interest to TCI of Northern New Jersey, Inc., for a Renewal of the Certificate of Approval for the Construction and Operation of a Cable Television System in the Village of Ridgewood, Bergen County, New Jersey, BPU Docket No. CE97100780, OAL Docket No. CTV 7625-98, in which ALJ Richard McGill determined that such a provision was invalid and unenforceable. In addition, the Petitioner claimed that it has not offered to provide a discounted rate as described in the Initial Decision and ordinance, but instead as set forth at the hearing and which is repeated in its exception filing. This policy provides a discount of 10% to senior citizens but does not provide any discount to disabled citizens. Finally, Petitioner noted that the language in Section 26 of the Borough's ordinance is in conflict with N.J.S.A. 48:5A-11.3, which specifically prohibits municipalities from requiring senior or disabled discounts.

The Board agrees with the exception to the ALJ's recommendation provided by the Petitioner. The New Jersey State Cable Television Act forbids a municipality from requiring a discount as part of the renewal process, as set forth in N.J.S.A. 48:5A-11.3. Thus, the Petitioner can only be held to a senior discount that had expressly been "volunteered" and agreed to by the Company. To the extent that the senior policy is as set forth in Exhibit P-8 and the exceptions filed by the Petitioner, that policy is the only discount program that can be required of the Company.\* As such, the Board HEREBY FINDS that the Borough's ordinance, as written, does

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\* The senior discount offered by the Petitioner consists of the following:

Cablevision shall implement a senior discount in the amount of ten percent (10%) off the monthly rate of the broadcast basic level of cable television reception service to any person sixty-two (62) years of age or older who subscribes to the Company's television service, subject to the following:

- (i) Such discount shall only be available to eligible senior citizens who do not share the subscription with

not reflect the senior citizen discount agreed to by the Petitioner. Instead, the Board HEREBY MODIFIES the Initial Decision so as to reflect the senior citizen discount set forth in Exhibit P-8 and set forth at length in this Order.

Other issues:

In all other aspects, including billing and payment scheduling, free services and the "hold harmless" provision, the Board HEREBY ADOPTS the recommendation of the ALJ for essentially the reasons set forth in the Initial Decision. The only remaining issue, based upon the exceptions filed by the Petitioner, stem from the statement by the ALJ in the Initial Decision that, "[b]ased on the whole of the record, I CONCLUDE that Lincoln Park considered the application for renewal with deliberate consideration." The Petitioner asserted that the Borough never conducted an ascertainment proceeding to determine its cable related needs, as required by N.J.A.C. 14:18-13.2, et seq. The Petitioner requested that the Board reject the portion of the Initial Decision in which ALJ Bari-Brown made this conclusion.

The Board declines to do so, noting that many municipalities each year renew cable franchises without conducting full ascertainment proceedings and cable companies do not object as long as the terms of the renewals are acceptable. The Board must, however, clarify the statement in the Initial Decision, attributed to the Borough, that all correspondence and submissions to the Office following the Petitioner's notice of intent to renew in 1999 adequately complied with the requirements of N.J.A.C. 14:18-13.1, et seq. The Borough submitted no documents or correspondence to the Office that would constitute a record of any ascertainment proceedings. Nevertheless, the Board HEREBY FINDS that the Borough's failure to conduct a full ascertainment proceeding in this matter does not necessarily imply that the Borough could not have considered the application for renewal with "deliberate consideration." As such, the Board HEREBY ADOPTS the conclusion of the ALJ as to the nature of the Borough's overall consideration of the Petitioner's application.

CERTIFICATE OF APPROVAL

The Board has reviewed the application for municipal consent, the petition for a Renewal Certificate of Approval, the municipal consent ordinance and the Initial Decision. The terms and conditions of the Initial Decision and the ordinance, with the modifications outlined above, are incorporated into this Renewal Certificate of Approval as if fully set forth herein. Based upon this review and the recommendation of the Office of Cable Television, the Board HEREBY FINDS the following:

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more than one person in the same household who is less than sixty-two (62) years of age; and

(ii) In accordance with N.J.S.A. 48:5A-11.2, subscribers seeking eligibility for the discount must meet the income and residence requirements of the Pharmaceutical Assistance to the Aged and Disabled program pursuant to N.J.S.A. 30:4D-21; and

(iii) The senior discount herein relates only to the broadcast basic level of cable television service, and shall not apply to any additional service, feature, or equipment offered by the Company, including any premium channel services and pay-per-view services; and

(iv) Senior citizens who subscribe to a level of cable television service beyond expanded basic service, including any premium or per channel a la carte service, shall not be eligible for the discount.

1. The Petitioner possesses the requisite legal, character, financial and technical qualifications for the awarding of a Renewal Certificate of Approval. Further, the Borough reviewed these qualifications in conjunction with the municipal consent process.
2. The design and technical specifications of the system shall ensure that the Petitioner provides safe, adequate and proper service.
3. The Petitioner has represented that all previously required construction within the franchise territory is complete.
4. The franchise period as stated in the ordinance is five years from the date of issuance of this Certificate with an automatic renewal provision of five years thereafter pursuant to N.J.S.A. 48:5A-19 and -25. The Board finds these periods to be of reasonable duration.
5. The Petitioner's rates shall be regulated and tariffs shall be filed for all services, in accordance with the rules and regulations of the Federal Communications Commission, the Board and the Office of Cable Television. The Petitioner shall maintain informational tariffs for unregulated service rates and promptly file any revisions thereto.
6. Pursuant to statutory requirements, the ordinance specifies a complaint officer to receive and act upon complaints filed by subscribers in the Borough. In this case, it is the Business Administrator. All complaints shall be received and processed in accordance with the applicable rules.
7. The Petitioner shall maintain a local business office or agent for the purpose of receiving, investigating and resolving complaints. The current local office is located at 40 Potash Road in the Borough of Oakland, New Jersey.
8. The franchise fee to be paid to the Borough is specified to be 2% of the Petitioner's gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for its cable television reception service in the Borough. Additional regulatory fees shall be paid to the State in an amount not to exceed 2% of Petitioner's gross operating revenues derived from intrastate operations. The Board finds these fees to be reasonable.
9. As modified herein, the Petitioner shall provide cable to all residences in the Borough at tariffed rates for standard and non-standard installation. Commercial establishments shall be constructed in accordance with the Petitioner's commercial line extension policy attached to this Certificate as Appendix "I." If access is denied by any property owner where service is requested under Section 8(b) of the Borough's ordinance, the Petitioner may file a petition with the Board pursuant to applicable law.
10. The Petitioner shall provide public, educational and governmental ("PEG") access channels and facilities in accordance with its renewal application and the ordinance. Specifically, the Petitioner provides two channels specifically for regionalized PEG access. The channels are used by schools, libraries, religious,

government and other organizations in the community wishing to cablecast their programming.

11. The Petitioner maintains PEG access studios for non-commercial use by any resident individual or group residing in the community for production of PEG access programming. The studio provides free TV production training through a course in various aspects of production including camera, directing and lighting. The studio, its equipment and editing facilities are available for these groups to produce PEG access programming and cablecast the programming on the designated access channels. Use of the access studios, equipment and editing facilities shall be available free of charge to interested groups on a first-come, first-served basis. The Petitioner also provides some remote equipment for use on field shoots.
12. The Petitioner shall provide one standard installation and monthly basic cable service, free of charge, to all public schools, the municipal building, the public library, the first aid squad building and Hose Companies #1 and #2.
13. In accordance with the Initial Decision, the Petitioner shall provide, free of charge, one high-speed cable modem and monthly Internet access service, including standard installation, to all public schools and the public library as well as one municipal location in the Borough.
14. As discussed herein, the Petitioner shall implement a senior citizens discount program in the Borough in the amount of 10% off the monthly rate for basic service for senior citizens who meet the income and residency requirements of the Pharmaceutical Assistance to the Aged and Disabled ("PAAD") program, as allowed by N.J.S.A. 48:5A-11.2.

Based upon these findings, the Board HEREBY CONCLUDES, pursuant to N.J.S.A. 48:5A-17(a) and 28(c), the Petitioner has the municipal consent necessary to support the petition, that such consent and issuance thereof are in conformity with the requirements of N.J.S.A. 48:5A-1 et seq., that the Petitioner has complied or is ready, willing and able to comply with all applicable rules and regulations imposed by or pursuant to State or federal law as preconditions for engaging in the proposed cable television operations, that the Petitioner has sufficient financial and technical capacity, meets the legal, character and other qualifications necessary to construct, maintain and operate the necessary installations, lines and equipment, and is capable of providing the proposed service in a safe, adequate and proper manner.

Therefore, the Petitioner is HEREBY ISSUED this Renewal Certificate of Approval as evidence of Petitioner's authority to construct and operate a cable television system within the entirety of the Borough.

This Renewal Certificate is subject to all applicable State and federal laws, the rules and regulations of the Office of Cable Television, and any such lawful terms, conditions and limitations as currently exist or may hereafter be attached to the exercise of the privileges granted herein. The Petitioner shall adhere to the standards set forth by the Federal Communications Commission's rules and regulations, 47 C.F.R. §76.1 et seq., including but not limited to, the technical standards of 47 C.F.R. §76.601 through §76.630. Any modifications to the provisions thereof shall be incorporated into this Certificate.

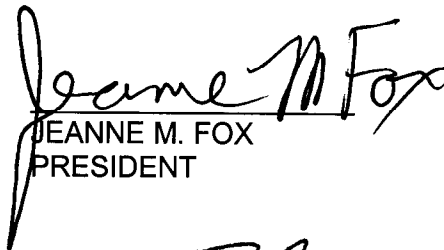
Failure to comply with all applicable laws, rules, regulations and orders of the Board or Office of Cable Television and/or the terms, conditions and limitations set forth herein may constitute sufficient grounds for the suspension or revocation of this Certificate.

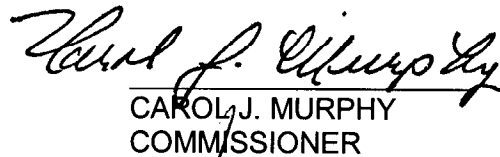
This Renewal Certificate is issued on the representation that the statements contained in the Petitioner's applications are true, and the undertakings therein contained shall be adhered to and enforceable unless specific waiver is granted by the Office of Cable Television pursuant to the authority contained in N.J.S.A. 48:5A-1 et seq.

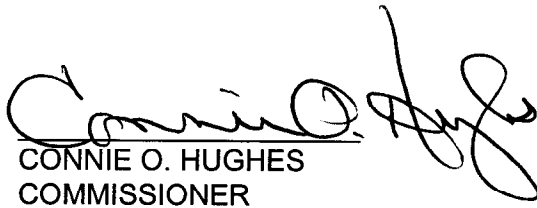
This Certificate shall expire five years from the date of its issuance.

DATED: 7/23/04

BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

  
CAROL J. MURPHY  
COMMISSIONER

  
CONNIE O. HUGHES  
COMMISSIONER

  
JACK ALTER  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

**APPENDIX "I"**  
**CABLEVISION OF OAKLAND, LLC**  
**BOROUGH OF LINCOLN PARK**

**COMMERCIAL LINE EXTENSION RATE POLICY**

1. Intent. It is the intent of CABLEVISION that a rate policy be established under which any businesses within the company's franchise areas would have the opportunity to obtain cable television service.

2. Applicability. This line extension rate shall apply to all cable television service extensions, aerial and underground, on public and private lands, provided by CABLEVISION.

3. Definitions.

(a) Line or Service. That situation where the company must extend its existing trunk line and/or distribution cable in order to make a tap available from which a drop line can be run so as to provide cable television service to the applicant's premises. The line or service extension shall include, but not be limited to, all poles, cables, amplifiers, extenders, splitters, taps, right-of-way acquisitions and clearing, trenching, backfilling and any other one-time costs incurred by CABLEVISION in connection with extending service to the applicant. A line or service extension shall not include facilities provided by CABLEVISION pursuant to its applicable installation rates then existing.

(b) Applicant. Any person, firm, corporation or association that applies to CABLEVISION for service to a commercial establishment in the franchise area.

(c) Commercial Establishment. Any building or structure, or portion thereof, not used for residential purposes including, but not limited to, profit and non-profit corporations or associations, which has requested the installation of cable television service requiring line or service extension as defined herein.

(d) Drop Line. That cable which connects the subscriber's television receiver to the cable transmission system by way of a tap.

(e) Tap. A connecting device inserted in the cable transmission line which allows for the connection of a drop line. An aerial or underground "drop line" constitutes a transmission cable running from the distribution or feeder cable to the subscriber's connection or receiver.

(f) Trunk Line. Transmission cable running from headend to trunk amplifiers and through each trunk amplifier in cascade in the system from which connections for distribution and feeder cable are provided.

(g) Distribution or Feeder Cable. Transmission cable which extends from the distribution amplifiers serving specific areas within the system and from which drop lines are extended.

(h) Qualified Subscriber. Any applicant who, as a potential subscriber, has committed to purchase at least the basic service from CABLEVISION for a period of not less than two (2) years.

4. Schedule.

(a) Within thirty (30) days after the date on which the service is requested, but not more than ninety (90) days from the date upon which the request for service was made, CABLEVISION shall furnish the applicant with (1) an estimate request form, (2) a copy of this line extension policy, and (3) notification that service can only be provided by means of a line or service extension.

(b) If the applicant requests a written estimate within thirty (30) days after being advised that service can only be provided by means of a line or service extension, CABLEVISION shall, within sixty (60) days of such request, furnish a written estimate, a construction schedule, and a service extension contract to be signed by the applicant.

(c) The applicant must return a signed service extension agreement within thirty (30) days after receipt of the material described in Paragraph (b) together with a check in the amount of \$50.00 representing a service extension deposit which will be credited against the applicant's contribution in aid of construction invoice to the applicant which must be signed and returned to CABLEVISION with the full payment before construction will commence.

(d) If the applicant fails to meet any of the applicable deadlines or any of the terms herein before set forth without the approval of CABLEVISION, any obligations pertaining to the proposed line or service extension shall cease and be of no further force or effect.

5. Commercial Line Extension Rate Charges.

A commercial establishment requesting line or service extension shall bear all of the following costs to make a tap available from which a drop line may be installed:

(a) The actual cost to CABLEVISION of materials and equipment necessary to make service available plus shipping charges and applicable taxes.

(b) The actual labor costs incurred by CABLEVISION, exclusive of benefits.

(c) The actual costs of designs, surveys, prints and engineering or other such labor involved in the preparation or actual construction required.

(d) The direct costs of any easements, make-ready or other third party actions required to perform and complete construction such as, but not limited to, power companies, telephone companies, road work, trenching or the like.

(e) In addition, the applicant shall pay to CABLEVISION a sum equal to twenty percent (20%) of the entire actual cost of construction as set forth above.

(f) In the event additional commercial subscribers come on-line in an area in which service extension has been provided in accordance herewith, each additional subscriber shall, in addition to the applicable installation rate, be required to contribute their pro-rata share of the original construction costs. Said pro-rata share shall be derived by dividing the original construction cost by the number of then existing on-line subscribers including the additional subscriber(s).

(g) Any funds collected from additional subscribers will be retained by CABLEVISION in an interest-bearing account and distributed equitably so as to equalize all subscriber construction contributions. Distribution will be made two years after the original service extension was provided. After said two year period, there shall be no further apportionment of the original construction cost.

6. Record Keeping and Annual Reports. CABLEVISION shall maintain appropriate records of its costs, subscriber and applicant billings, and revenues resulting from a request for or the construction of a service extension.

7. Ownership of Facilities. CABLEVISION shall own and maintain the facilities for which a service extension is made and any applicant-subscriber shall not acquire any interest herein.

8. Method of Service Extension. CABLEVISION reserves the right to provide either an aerial or underground service extension.

9. Term of Service. The minimum term of at least basic subscriber service for an applicant requesting service extension, or his successors and assigns, shall be twenty-four (24) months after the service extension has been energized. Said term shall be guaranteed by the applicant in the service extension contract specified in Paragraph 4(c) hereof.

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**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

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PUBLIC UTILITIES  
NEWARK, N.J.

**INITIAL DECISION**

DKT. NO. CTV 3150-02

Agency Dkt. No. CE01030164

**I/M/O THE APPLICATION OF CABLEVISION  
OF OAKLAND, INC. FOR RENEWAL OF  
CERTIFICATE OF APPROVAL IN THE  
BOROUGH OF LINCOLN PARK**

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**Sidney A. Sayovitz, Esq.**, for Cablevision of Oakland, Inc., petitioner  
(Schenck Price Smith, *et al*, attorneys)

**David C. Dixon, Esq.**, for Borough of Lincoln Park, respondent  
(Scangarella, Feeney & Dixon, attorneys)

**Alex Moreau, Deputy Attorney General and Caroline Vachier,**  
Deputy Attorney General, for Board of Public Utilities  
(Peter Harvey, Attorney General of New Jersey, attorneys)

Record Closed: April 12, 2004

Decided: June 11, 2004

BEFORE **MUMTAZ BARI-BROWN, ALJ:**

The Borough of Lincoln Park (Respondent, Borough of Lincoln Park) granted Cablevision of Oakland, Inc. (Petitioner or Cablevision) the right to operate and maintain a cable television system. Cablevision contends that the terms of the ordinance are arbitrary, unreasonable and unlawful.

On March 21, 2002, the Board of Public Utilities transmitted the matter to the Office Of Administrative Law (OAL) as a contested case pursuant to *N.J.S.A. 52:14B-1 to -15* and *N.J.S.A. 52:14F-1 to -13*. The hearing was held and the record closed on April 12, 2004. For good cause, an extension of time to file the initial decision was granted until June 11, 2004. *N.J.S.A. 52:14B-10(c)*; *N.J.A.C. 1:1-18.8*.

The issues are whether the terms of the ordinance approved by Lincoln Park constituted an arbitrary, unreasonable or unlawful denial of Oakland's application; and whether the parties failed to comply with the renewal procedures pursuant to law and regulation.

### **FACTS**

1. Cablevision is a cable television company.
2. On December 11, 1975, the Board of Public Utilities (Board or BPU) granted petitioner (then operating as Micro-Cable Communications Corp/United Artists Cable<sup>1</sup>) a Certificate of Approval to construct, operate, and maintain a cable television system in the Borough of Lincoln Park. On December 11, 1990, the Certificate expired, and BPU authorized petitioner to continue to provide service to Lincoln Park. (Renewal Certificate of Approval, Board of Regulatory Commissioners Dkt. No. CE 91030301, dated October 7, 1991).
3. On March 9, 1990, petitioner filed an application before Lincoln Park for the renewal of municipal consent.
4. On January 28, 1991, Lincoln Park adopted Ordinance No. 1-91, which permitted petitioner to continue to provide service to the Borough.
5. On February 4, 1991, petitioner accepted the terms and conditions of the Ordinance.

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<sup>1</sup> In 1993, TCI Communications acquired UA Columbia Cablevision. In 1998, Cablevision acquired TCI.

renew its Certificate of Approval for Lincoln Park.

7. On October 7, 1991, the Board granted petitioner's application. The Renewal Certificate of Approval expired on December 11, 2000. The BPU Order states in part:

The Board HEREBY FINDS the following: Petitioner possesses the requisite legal, character, financial and technical qualification for the awarding of a Certificate of Approval. Further, these qualifications were reviewed by the Borough in conjunction with the municipal consent process.

The franchise period as stated in the ordinance is ten years. The Office of Cable Television finds this period to be of reasonable duration.

[Renewal Certificate of Approval, Board of Regulatory Commissioners Dkt. No. CE 91030301, dated October 7, 1991].

8. On March 3, 2000, Cablevision filed an application before Lincoln Park for renewal of its franchise.
9. On May 1, 2000, Lincoln Park and Cablevision held a meeting and discussed certain terms of the franchise.
10. On October 16, 2000, Lincoln Park adopted Municipal Consent Ordinance No. 14-00, which states, "ORDINANCE RENEWING THE NON-EXCLUSIVE RIGHT AND FRANCHISE TO CABLEVISION OF OAKLAND, INC. TO CONSTRUCT, MAINTAIN, AND OPERATE A CATV SYSYTEM WITHIN THE BOROUGH OF LINCOLN PARK FOR A PERIOD OF TEN YEARS. See, Regular Meeting of the governing Board of Lincoln Park, October 16, 2000.
11. Additionally, Ordinance 14-00 provides in part:

DURATION OF NEW FRANCHISE: The consent herein granted shall expire in five (5) years from the date the certificate of approval is issued by the Board of Public Utilities. The consent granted herein shall be subject to automatic renewal for a period of five (5) years.
12. On November 20, 2000, Cablevision rejected the Ordinance. On March 13, 2001, Cablevision charged that certain sections are arbitrary, unreasonable and unlawful.

Position of the Parties

Cablevision contends certain sections of Ordinance 14-00 are arbitrary, unreasonable and unlawful. Therefore, Cablevision urges this tribunal to modify or delete designated sections of the Ordinance and issue a decision renewing the cable television franchise in accordance with the Ordinance, as modified. Specifically, Cablevision contends that language in Sections 8, 9, 16, 17, 20, 25, and 26 be modified or deleted because it is beyond the authority of the Borough, or is arbitrary, capricious or unreasonable. Cablevision presented the testimony of Gary Shaw, Governor Affairs Manager and Adam Falk, Counsel for Cablevision Systems Corp.

Respondent argues that Cablevision presented testimony only “to a lack of knowledge of any ascertainment proceeding undertaken” by the Borough. However, the “ascertainment process is neither spelled out with particularity, nor is there any requirement for hearing or other proceedings”. Respondent submits that all submissions and correspondence to the Office of Cable Television, which followed the notice of intent to renew issued by TCI in 1999 adequately, complied with the requirements of *N.J.A.C. 14:18-13.1 et seq.* Furthermore, Cablevision’s objections to provisions of the cable consent Ordinance are insufficient to overcome the presumption of validity of Ordinance 14-00. Respondent submits, “The Borough has not withheld its consent, but has granted same – *albeit* with terms which are not quite to the liking of Cablevision.” Respondent’s Brief at 17.

**DISCUSSION**

Pursuant to *N.J.A.C. 14:18-13.1* cable television operators shall file for a municipal consent. In the renewal process, “either the municipality or the cable television operator may commence a municipal fact finding process (ascertainment)” before the expiration of the Certificate of Approval. *N.J.A.C. 14:18-13.1(a)1.*

The major issue is whether the actions of Lincoln Park in adopting Ordinance 14-00 were arbitrary and capricious, or unreasonable. Conduct having no rational basis in the law is arbitrary and capricious. *Bayshore Sewerage Co. v. Dep't of Env'tl. Prot.*, 122 N.J. Super. 184, 199 (Ch. Div. 1973) (citing *Bicknell v. United States*, 422 F.2d. 1055, 1057 (5 Cir. 1970)). Factors to consider are whether the actions violated the enabling act's express or implied legislative policies, whether there is substantial evidence in the record to support the findings on which the action was based, and whether, in applying the legislative policies to the facts, the action could not reasonably have been made on the relevant facts. *Matter of Warren*, 117 N.J. 295, 296-7 (1989)(citing *Campbell v. Dep't. of Civil Service*, 39 N.J. 556, 562 (1963)); *Edison Twp. Bd. of Ed. v. Edison Twp. Princ. Ass'n.* 304 N.J. Super. 459, 463 (App. Div. 1997)(citing *In re Musick*, 143 N.J. 206, 216-17 (1996)). The franchise ordinance "must be afforded a presumption of validity. Indeed, the challenger has the burden of proof. *Hutton Park Gardens v. West orange Town Council*, 68 N.J. In *Bayshore* the court stated:

Arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances. Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.... Moreover, the court should not substitute its judgment for that of an administrative or legislative body if there is substantial evidence to support the ruling.

[*Bayshore Sewage Co. v. Dept. of Env'tl. Protection*, 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), *aff'd.* 131 N.J. Super. 37 (App. Div. 1974).

Under this guidance, I have considered Cablevision's petition that the language in Sections 8, 9, 16, 17, 20, 25, and 26 be modified or deleted because it is beyond the authority of the Borough, or is arbitrary, capricious or unreasonable.

Section 8:

Cablevision objects to Section 8 because it “granted authority to Cablevision over a private right of way, an authority that the municipality lacked.” Petitioner’s Brief at 8. Cablevision further claims the language is ambiguous and contains contrary language regarding cablevision’s obligation to serve businesses, “indicating that the extension of plant to provide service must be either free of charge or pursuant to a line extension policy. *Ibid.*

Section 8 states:

EXTENSION OF SERVICE The Company, in accordance with the proposal for the provision of service described in the Company’s Application, shall be required to proffer service:

- (a) Along any right-of-way to any person’s business or residence located in the franchise territory, at tariffed rates for standard installation, and at tariffed rates for any new, non-standard installation for any business or residence located more than 125’ from any existing line of connection of the system;
- (b) Along any private right-of-way to any person’s business or residence located in Deer Run, Woodland Hills Pine Brook Village, Hilltop Farms, Skyline Village, Hunting Meadows and Beaver Brook Garden Apartments.

Petitioner contends the “franchising authority” has no power to grant rights to Cablevision. Additionally, Section 8 contains contrary language regarding Cablevision’s obligation to serve businesses. The “extension of plant to provide service must be free of charge or pursuant to a line extension.” Petitioner’s Brief at 4.

Section 9:

Cablevision asserts the Notice provision in Section 9 is ambiguous and “might impose obligations upon Cablevision that may be different for other utilities.” *Id.* at 5. Section 9 states:

Notice: Except in the case of emergent repair or as otherwise provided by law, the Company shall provide at least ten (10) days' prior written notice to the Borough of any proposed excavation, repair or installation within the public right-of-way, including state or county roads, and shall provide at least forty-eight (48) hours telephone notice of any proposed entry within the public right-of-way, which may in any way interfere with, infringe upon, or affect vehicular or pedestrian traffic upon any street or public right-of-way, including tree trimming or tree removal.

Section 16:

Cablevision asserts the language in Section 16 implies the Borough has authority to regulate rates. Section 16 states:

**ESTABLISHING A RATE STRUCTURE FOR CATV RECEPTION SERVICES:** The Municipality, having determined that the rates proposed in the application for cable television reception service are reasonable, approves them as presented, subject to review by the BPU.

Additionally, Cablevision claims that section twenty requires the company to offer certain free services to which Cablevision had not agreed. For example, the Ordinance requiring Cablevision to offer, "a free internet service to designated municipal buildings was beyond what Cablevision had offered to the Borough." *Id.* 5.

Section 17:

Cablevision testified the Borough's Ordinance, Section 17 violates State law because it would prohibit the company from billing subscribers in advance of services. Section 17 provides:

**BILLING AND PAYMENT SCHEDULE:** The Company shall bill subscribers only for cable television services rendered to the date of billing. No billing services shall be due before the fifteen (15<sup>th</sup>) day following receipt of such billing.

Cablevision maintains it uses advanced billing for other municipalities where Cablevision provides service. Petitioner's Brief at 4. Indeed, the BPU

“advised the Borough that a cable company had the authority to require advance payment under uniform and nondiscriminatory terms and conditions.” *Ibid.* See *N.J.A.C 14:18-3.8*. Cablevision further claims, “If Cablevision were to comply with Section 17 of the Ordinance, it would have to change its entire billing format in order to accommodate that Borough.” *Ibid.* Cablevision submits that advanced billing is consistent with the operations of other cable companies and should be permitted. *Ibid.*

Section 20:

Petitioner objects to Section 20 because it requires the company to offer free Internet services to some municipal buildings. Section 20 states:

**FREE SERVICES:** The Company shall provide the installation of one outlet, basic monthly service and Internet access, when available, to the Municipal building, Public Library, First Aid Squad Building, the Emergency Evacuation Shelter, Hose Companies #1 and #2 and all public schools, free of charge. In addition, the Company shall provide, free of charge, internet access connections, when available, to all public schools, and shall provide, free of charge, internet access connections, when available, to any and all Borough owned and/or operated buildings, including, but not limited to the Municipal building, Public Library, First Aid Squad Building, Emergency Evacuation Shelter, Hose Companies #1 and #2 at any time that such service is provided to any other municipality within New Jersey served by the Company. Each additional outlet installation or Internet access connection shall be paid for by the institution on a cost-plus labor basis. Monthly service on such additional outlets shall be charged at the regular tariff rates.

Cablevision maintains it did not agree to provide the service. Petitioner further argues that under Federal law, Internet services are not deemed a “cable television service.” Therefore, the municipality lacks authority to require free Internet service. However, Cablevision is prepared to provide free Internet services to “all public schools, in some instances private schools, all municipal public libraries and one municipal public building.” Petitioner’s Brief at 5.

Sections 25 and 26

Cablevision objects to certain language in Section 25, "HOLD HARMLESS". Specifically, Cablevision requests that the term "sole" at the end of Section 25 be deleted because it "placed unreasonable obligations upon the Company to indemnify the Borough even in circumstances in which the Borough may have been primarily negligent". With regard to Section 26, "REDUCTION OR DISCOUNT IN RATES FOR SENIOR CITIZENS AND DISABLED CITIZENS", Cablevision is prepared to offer a senior citizen discount in accordance with its policies. (P-8).

**CONCLUSIONS**

I have considered petitioner's claims that the actions of Lincoln Park in adopting Ordinance 14-00 were arbitrary and capricious, or unreasonable. I have also considered Lincoln Park's post hearing arguments, including the briefs and appendix. Respondent maintains that it complied with all requirements of N.J.A.C. 14:18-13.2 and Cablevision "has failed to sustain its burden of proof and burden of persuasion." Therefore, the petition of Cablevision of Oakland, Inc. for issuance of a certificate of authority without consent of the municipality must be denied.

Based on the whole of the record I **CONCLUDE** that Lincoln Park reviewed Cablevision application for renewal with deliberate consideration. For example, on March 8, 2000, BPU issued guidelines to Lincoln Park regarding the renewal process, which states in part:

The hearing may be adjourned from time to time but must be completed no later than 30 days from the date the hearing was first convened. Within 30 days after the end of the hearing, a decision to reject or to grant consent must be made by the municipal clerk and the Office of Cable Television.

[R-1 at App. N].

Thereafter, on April 27, 2000, the Borough Clerk prepared a draft of the franchise ordinance. The proposal changed the length of the franchise (Section 5), Extension of service to include Hunting Meadow (Section 8), Billing and payment procedures (Section 17), Free Services (Section 2). On May 1, 2000, the Borough proposed additional changes and modifications. (R-1 at App. P and Q). Additionally, the Borough consulted BPU regarding the franchise term. The Office of Cable Television advised Lincoln Park, "The duration of the franchise term is a negotiable matter between the cable operator and the municipality". (R-1 at App. U). Thereafter, the parties discussed the length of term. The evidence further reveals that on May 1, 2000, Cablevision and Lincoln Park met, discussed the franchise term and other sections of the franchise. Indeed, Cablevision offered certain commitments in exchange for a 10-year term, rather than a 5-year term. Moreover, after the meeting the parties placed in writing their positions. Cablevision was unsuccessful in persuading Lincoln Park to grant the company a 10-year franchise.

Indeed, the parties exchanged correspondence regarding several terms of the franchise. Indeed, on May 10, 2000, Cablevision forwarded to Lincoln Park a letter regarding the proposed changes to the renewal franchise. The correspondence states in part:

It was a pleasure meeting you and the members of the Borough...on May 1, 2000.

At the meeting, one topic that was discussed was the commitment Cablevision of Oakland would be willing to make for a 10-year franchise renewal. If the Borough grants a 10-year renewal to Cablevision, we will commit...

The Council also discussed expanding the public access capabilities...In consideration of a 10-year franchise renewal Cablevision will be willing to ...With this equipment the borough will be able to embark on production of non-commercial public and government access programming.

Cablevision is willing to make the commitments contained in this letter for the renewal of a 10-year non-exclusive franchise. [R-1 Brief at App. T].

On May 11, 2000, the Borough faxed the following statement to Cablevision:

"Please be reminded that at the May 1, 2000 Work Meeting of the Governing Body of the Borough of Lincoln park you were asked to put in writing the 5 years franchise vs 10 year franchise (what Cablevision would give us), I asked that I receive this information by noon on the 11<sup>th</sup> of May. Please make sure I receive it ASAP.

Also, I tried to reach you by phone this morning to leave you a message, I used the phone number on the business card you gave me, the message asked to punch in the five (5) digit extension, you're card only has a three (3) digit extension, hence I could not leave a message for you, that's why the fax". [R-1 Brief at App. S].

On May 3, 2000, the Borough posed the following questions to the Office of Cable Television, "The Borough is currently reviewing/renewing its cable franchise agreement with Cablevision. Listed below are questions/concerns:

Does a longer contract length allow for better service from Cablevision to Lincoln Park? We have been informed that the timeliness and extent of the service, infrastructure updates and operational expansion, necessitate at least a 10-year agreement renewal.

[R-1 at App. T].

Based on the whole of the record, I **CONCLUDE** that Cablevision failed to demonstrate Lincoln Park the actions of the Borough is granting a 5-year franchise term was arbitrary, unreasonable or capricious.

The Office of Cable Television has addressed several issues raised in this proceeding. For example, with regard to installing line extensions, Cablevision must provide service to all residents of the Borough at no cost beyond standard and non-standard installation rates. (P-7). With regard to billing, Cablevision's policy includes billing subscribers in advance. All cable companies in the State bill in advance. To accommodate the Borough, the company would have to change its entire billing format, which might result in increased costs to

subscribers. Therefore, with regard to Section 17, I **CONCLUDE** that Borough's attempt to prohibit advanced billing is unreasonable.

With regard to Section 20, Cablevision is prepared to provide free Internet services to "all public schools, in some instances private schools, all municipal public libraries and one municipal public building." Petitioner's Brief at 5. Therefore, I **CONCLUDE** that Borough's requirement that Cablevision provide free services to additional entities is unreasonable.

With regard to Section 26, Cablevision is prepared to offer a senior citizen discount in accordance with its policies. Therefore, I **CONCLUDE** the language in Section 26 is consistent with the company's policy and need not be modified.

With regard to the remaining sections challenged by petitioner, I **CONCLUDE** that Cablevision failed to demonstrate that the conduct of the Borough of Lincoln Park regarding Ordinance 14-00 constituted bad faith, arbitrary, unreasonable or capricious actions.

### **ORDER**

It is **ORDERED** that the petition of Cablevision of Oakland, Inc. for issuance of a certificate of authority, pursuant to *N.J.S.A. 48:5A-1* without the consent of the municipality is **DENIED**. It is further **ORDERED** that Ordinance 14-00 be modified in accordance with the findings and conclusions herein.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or

reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR OF THE OFFICE OF CABLE TELEVISION, BOARD OF PUBLIC UTILITIES, Two Gateway Center, Newark, New Jersey 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 11, 2004  
DATE

  
\_\_\_\_\_  
**MUMTAZ BARI-BROWN, ALJ**

E-mail Receipt of Initial Decision Confirmed by the Board of Public Utilities on:

6-11-04  
DATE

Mailed to Parties:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
OFFICE OF ADMINISTRATIVE LAW

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**APPENDIX**

**Witnesses:**

Presented on behalf of Petitioner:

Gary Shaw  
Adam E. Folk

Presented on behalf of Respondent:

None

**Exhibits:**

Offered by Petitioner

- P-1 Letter from Mary Green
- P-2 Application by Cablevision of Oakland, Inc.
- P-3 Guide to Franchise Renewal
- P-4a Transcript of Cablevision of Oakland, Inc., hearing, dated July 17, 2000
- 4b Transcript of Cablevision of Oakland, Inc., hearing, dated August 21, 2000
- 4c Transcript of Cablevision of Oakland, Inc., hearing, dated September 18, 2000
- 4d Transcript of Cablevision of Oakland, Inc., hearing, dated October 16, 2000
- P-5 Ordinance 14-00 adopted by Borough of Lincoln Park
- P-6 Letter from Cablevision of Oakland, Inc.
- P-7 Letter from the Board of Public Utilities re: Cablevision of Oakland, Inc.
- P-8 Proposed Language of Cablevision of Oakland, Inc.

Offered by Respondent

- R-1 Letter from Cablevision of Oakland, Inc., to Borough of Lincoln Park.